

LIMITED SITE ACCESS AGREEMENT

This Limited Site Access Agreement ("Agreement") is made by and between McMillan McGee Corp. ("McMillan") and the Third Site Trust (the "Trust"):

WHEREAS, the Trust controls access to the portions of the real property comprising the Third Site Superfund Site in Boone County, Indiana ("the Site"), where an environmental response action is being implemented under the direction of the U.S. Environmental Protection Agency;

WHEREAS, McMillan was engaged by the Trust to design and implement an EPA-approved remedy ~~at within the sheet-pile enclosed DNAPL area of the Site known as Electrical Resistance Heating ("ERH");~~

WHEREAS, the McMillan designed and implemented ERH system initially met the cleanup objectives but there was then observed rebound in groundwater concentrations that exceeded the cleanup standards failed to meet EPA-mandated cleanup objectives for within the enclosed DNAPL area of the Site, which has given rise to a dispute between McMillan and the Trust concerning the reasons for the reboundat failure;

Commented [A1]: I don't love this paragraph but I suppose it's ok since they added that there is a dispute about the reason for that failure. Do we agree that the clean up objectives were not met?

WHEREAS, the Trust is in the midst of implementing EPA-approved sampling plan ~~at the DNAPL area of the Site to determine the location of the residual contamination including potential sources of contamination outside of the enclosed DNAPL area, that was not treated by the ERH system, and the Trust has consented to McMillan's request for one of its personnel to be allowed access to the Site to observe such sampling without interfering with the same;~~

WHEREAS, on July 22, 2020, McMillan requested, by way of the attached emails, permission for an additional representative and/or contractor to access the Site for the sole purpose of maintaining McMillan's ERH equipment as set forth below;

WHEREAS, the Trust has agreed to allow McMillan permission for an additional representative to access to the Site for such equipment maintenance purpose consistent with the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual terms and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Trust hereby grants permission to McMillan, ~~with prior notice to the Trust,~~ to enter upon the Site in order to perform the following limited preventative maintenance activities:

Pumps - freeing seized impellers & replacing seals;

Air compressor - repairing freeze damage;

Control panel - repairing wires damaged by rats, and

Checking for other weather-related and wear & tear damage, and & repairing such,

Commented [A2]:

Documenting and/or repairing damage caused by the
aforementioned sampling itself;

referred to hereafter as the "Limited Preventative Maintenance," and as well as permission to enter the Site for the limited activities noted in (b) and (c) below.

The Trust and McMillan agree that McMillan's access to the Site is strictly limited to:

- ____(a) the implementation of the Limited Preventative Maintenance;
- ____(b) observing without interfering with the EPA approved DNAPL area sampling sampling plan; and
- ____(c) the temporary relocation and restoration of its ERH equipment needed to conduct the ongoing DNAPL area EPA approved sampling plan, sampling in accordance with the EPA approved sampling plan.

In the event that McMillan identifies any additional ERH system maintenance activities or ~~DNAPL~~ sampling recommendations at the Site beyond the Limited Preventative Maintenance, McMillan agrees that it shall submit such proposed activities and/or safety measures in writing to the Trust ~~only~~ for its consideration.

In the event McMillan identifies any safety issues or recommendations at the Site, it shall notify the Trust and its on-Site representatives immediately.

2. McMillan agrees that neither it nor anyone on its behalf shall remove any ERH related equipment from within the fenced-in are of the Site, although McMillan shall temporarily relocate and thereafter restore as needed such equipment to an alternative location(s) within the fenced-in area as will facilitate the Trust's ongoing ~~Site DNAPL area~~ EPA approved sampling plan or other Site-related activities, and the restoration of the ERH equipment to its original location.

Commented [A3]: Do we want to have to move the equipment back to its original location after testing?

Commented [A4]: Don't want to spend another \$1000 on a forklift just to move the control panel back in place for it to sit there for many months before they decide how to screw us next.

3. McMillan agrees that neither it nor anyone on its behalf shall energize the ERH system or sample or test ~~or seek to sample or test~~ soils, groundwater, or any other environmental media at the DNAPL area of the Site without prior notice to the Trust and the written approval of the Trust.

4. McMillan agrees it will not, directly or indirectly, interfere with or disturb any environmental sampling or other activities of the Trust or its agents, contractors and other representatives at the Site.

Commented [A5]: We should ask for a reciprocal agreement that they stop interfering with us.

5. McMillan shall comply with all state, federal and local laws and regulations applicable to its presence at the Site and as to its activities at the Site, including all environmental and health and safety laws and regulations.

6. McMillan agrees that neither the Trust nor its agents, contractors or other representatives shall be held responsible or liable for injury, death, damage, or loss of any kind incurred by McMillan and its representatives arising out of or in connection with the presence or activities of McMillan personnel, including McMillan contractors, agents, employees or other representatives, at the Site under this Agreement, ~~and McMillan shall defend, hold harmless and indemnify the Trust, its agents, contractors and representatives from and against any losses, damages, claims, causes of action or demands of whatever nature which arise from the presence or actions of McMillan representatives at the Site.~~

7. McMillan and the Trust reserve and do not waive any and all prior existing contractual rights and obligations.

AGREED TO THIS ____ DAY OF _____, 2020:

MCMILLAN MCGEE CORP.

By: _____

Its: _____

THIRD SITE TRUST

By: _____

Trustee